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Supreme Court of The United States

NO

PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE FOURTH CIRCUIT

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Reasons for granting the writ:

I. The Court below seriously erred as a matter of law in establishing an erroneous rule of evidence insofar as the burden of proof in ship collision cases is concerned and directly *contra* to this Court's decision in *the CITY OF NEW YORK*, 147 U. S. 72, 85 10

II. The lower court, in affirming the decision of the District Court completely disregarded the duty owed by a moving vessel to adopt every proper precaution required by the special circumstances of the case to prevent a collision, and particularly that of maintaining a careful lookout and taking constant bearings, contrary to the decision of this Court in *The SUNNYSIDE*, 91 U. S. 208 11

III. The Court below based its decision upon a pivotal factual point not in any way supported by either the evidence, or the findings of fact of the District Court, while nevertheless affirming all of the findings of the District Court as to questions of fact 16

Conclusion 18

CITATIONS

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IN THE

Supreme Court of The United States

October Term — 1960

COMPANIA NACIONAL DE NAVEGACAO CASTEIRO PATRIMONIO,

Petitioner

v.

THE CABINS TANKER INDUSTRIES, INC. ET AL,

Respondents

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

Compania Nacional de Navegacao Casteiro Patrimonio, owner of the Brazilian M/V RIO MARACANA, prays that a Writ of Certiorari issue to review the judgement of the United States Court of Appeals for the Fourth Circuit, entered in the above case on January 4, 1961; Petition for Rehearing denied on February 27, 1961, with one member of the court dissenting, as he would have granted the petition.

CITATION TO OPINIONS BELOW

The memorandum opinion of the District Court is reported in 182 F. Supp. 811. The opinion of the Circuit Court of Appeals for the Fourth Circuit is printed in 285 Fed. (2d) 592. Both opinions are printed in the Appendix hereto.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on January 4, 1961. The jurisdiction of this Court is invoked under the provision of Title 28, U. S. C. 1254 (1).

QUESTIONS PRESENTED

I. WHETHER OR NOT THE BURDEN OF PROOF ON A SHIP WHOSE LIABILITY ARISING OUT OF A COLLISION HAS BEEN ESTABLISHED, IN ORDER TO RENDER THE OTHER VESSEL ALSO LIABLE, IS PROOF "BEYOND A REASONABLE DOUBT" OR PROOF IN ACCORDANCE WITH THE PREPONDERANCE OF THE EVIDENCE.

II. WHETHER OR NOT AS A MATTER OF LAW A MOVING VESSEL MUST MAINTAIN A CAREFUL LOOKOUT AND KEEP OUT OF THE WAY OF A DRIFTING VESSELL, PARTICULARLY WHERE THERE IS A DANGER OF COLLISION.

III. WHETHER OR NOT THE COURT BELOW ERRED AS A MATTER OF LAW IN AFFIRMING THE DECISION OF THE DISTRICT COURT WHILE AT THE SAME TIME MAKING A FINDING OF FACT NOT SUPPORTED BY THE EVIDENCE AND IN COMPLETE CONFLICT WITH THE FINDINGS OF THE DISTRICT COURT JUDGE.

STATEMENT

This matter deals with the issue of liability involved in a collision between a tanker, THE CABINS, and a dry cargo vessel, M/V RIO MARACANA, which occurred in the vicinity of the Maryland Pilot Station at the entrance to Chesapeake Bay, on November 16, 1956, off Cape Henry. The "RIO MARACANA" was a disabled, drifting vessel, "not under command." "THE CABINS" was a deeply laden tanker, inbound for Baltimore. The owner of the latter named vessel filed a libel against the dry cargo ship and her owner, who in turn filed a cross libel. The case was tried on the issue of liability on December 16 and 17, 1957, the District Court for the Eastern District of Virginia rendering its opinion on March 8, 1960, holding the "RIO" solely to blame. An appeal was taken to the United States Court of Appeals for the Fourth Circuit and argued on October 5, 1960. The latter Court affirmed the opinion on January 4, 1961. A Petition for Rehearing was denied on February 27, 1961, with one of the three judges who sat stating he would have granted the rehearing. (Appx. 60a)

The District Court Judge, for the most part correctly found the facts and so stated in his opinion. The times of the various maneuvers referred to hereinafter will be as stated by that Court. For clarification, a photo copy of libellant's Exhibit 2-A showing the location of the buoys and the approach of "THE CABINS" is attached to the back of the appendix. The courses steered by the tanker, according to its course recorder, are outlined thereon.

"THE CABINS" collided with the drifting "RIO" on the evening of November 16, 1956, at 2106 hours (9:06 P. M.) The collision occurred in Inland Waters, just inside the line of demarcation between Inland and International Waters. The night was clear, the sea smooth and visibility was good. The wind was from the southeast, approximately ten to twelve miles per hour, and the flood tide was setting in a northwesterly direction at a velocity of about one knot. (Francis Appx. 36a) (Perez Appx. 3a) (Current Tables Atlantic Coast, Lib. Ex. 5, page 146).

The "RIO" inbound for Norfolk, approached the Pilot Station off Cape Henry at about 2030 (8:30 P. M.), and as she reduced speed preparatory to boarding her pilot, she experienced an engine failure and found it necessary to drop anchor. (Perez Appx. 4a) She anchored at 2035, and at 2040 Captain R. C. Francis, a veteran pilot of the Virginia Pilots' Association, with some forty years experience, came aboard and advised the master that he was anchored in a restricted area, and would have to move. (Memorandum Opinion District Court, Appx. 41a). He was told by the pilot to take

in the anchor, and that they would then drift to the northwestward with the southeast wind and flood tide, out of the restricted area, and until the engine was ready. (Francis Appx. 36a) The ship which had been headed to the southeast (Francis Appx. 37a) swung around to her port, until her bow was headed in a northerly direction. She then commenced to slowly drift in a northwesterly direction. (Memorandum Opinion District Court Court Appx.). ***Please note this direction, northwest, is the same as the direction in which "THE CABINS" was headed:*** At this time there was no other ship traffic in the area.

The District Court, contra to the finding of the Court of Appeals (Appx. 45a), found this swing was completed by 2058 or 2059, at the latest, and not when the two ships were *in extremis* and only two lengths apart.

In his opinion Judge Hoffman expressly found the "RIO's" anchor was aweigh at 2055 or 2056 (10-11 minutes before collision) and that the vessel then swung to the north in approximately two or three minutes:

> "* * * An appropriate estimate of the time when the anchor was aweigh is 2055 or 2056."
>
> "The 'RIO's' pilot described the course of the vessel by stating that she 'spun around like a top' after the anchor was up. The head swung around to a NNE heading and commenced drifting towards the northwest. By reasons of its light draft, the heading from south to north was accomplished in approximately 2 to 3 minutes." (Memorandum opinion District Court Appx. 43a)